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STATE FOR EB/TPP/IPE AND WHA/CAR
STATE PASS USTR FOR TANUJA GARDE, KENT SHIGETOMI

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SUBJECT: CABLE TV PIRACY ENDS (ALMOST) IN TRINIDAD

REF: A) 04 POS 1895 B) POS 554 (C) WALLACE-WONG E-MAIL 9/20/2007

SENSITIVE BUT UNCLASSIFIED - HANDLE ACCORDINGLY

11. SUMMARY: (SBU) With the signing of a content agreement October 30, Trinidad's main cable company Flow and HBO-Latin America ended years of controversy about cable TV piracy in Trinidad. Starting December 1, Flow will pay for HBO-LA programming and discontinue unlicensed premium movie broadcasts. While HBO-LA ascribes success to their forceful outreach to U.S. officials and the local media, the Government of Trinidad and Tobago's (GOTT) decision against compulsory licensing and its efforts to mediate negotiations, albeit lukewarm, arguably played a role. END SUMMARY.

The Long Road to Reaching an Agreement

12. (U) When Columbus Communications (operating as Flow in T&T) acquired the Cable Company of Trinidad and Tobago (CCTT) in 2006, they continued to illegally broadcast channels belonging to 30 (out of a total of 68) content providers with whom they did not yet have content contracts, including HBO-LA (ref. A). Many of the content providers were unconcerned about the Caribbean signal piracy as they do not rely on licensing revenue, but HBO-LA had purchased exclusive rights to distribute in the Caribbean and actively pursued an end to HBO signal theft in the region. Negotiations for rights to broadcast HBO-LA programming in Trinidad started as early as 2004. However, it was not until early 2007, with developments like the GOTT decision against compulsory licensing, HBO-LA's offensive against Flow in the Trinidadian media and HBO-LA's launch of programming for the English-speaking Caribbean, that an agreement between HBO-LA and Flow seemed a real possibility (ref B).

13. (SBU) HBO-LA and Flow were reportedly close to signing an agreement the first week in September. Miguel Oliva, Vice President for Public Relations and Corporate Affairs for HBO-LA, reported that Flow unexpectedly contacted HBO-LA to finalize and publicly sign an agreement that same week. When no signing occurred, Oliva told Econoff that Flow was still reviewing the agreement. [NOTE: Per ref (C) e-mail, Post understands Oliva and the Television Association of Programmers (TAP), an industry trade group of which HBO-LA is a member, offered Washington agencies a different interpretation, i.e. that Flow could not afford HBO-LA. END NOTE.] Meanwhile, Steven Bereaux, the TATT lawyer responsible for monitoring HBO-LA's negotiations with Flow, told Econoffs in October that negotiations were stalled on an indemnity issue relating to Flow's liability for their past piracy of HBO programming. Bereaux added that Flow had announced and was ready to implement new customer pricing structures to reflect HBO-LA fees once they finalized an agreement, suggesting that Flow was serious about negotiations.

The Terms of the Agreement

¶4. (U) On October 30, less than one week prior to T&T national elections, Flow and HBO-LA signed a licensing agreement allowing Flow to legally distribute around 25 channels owned by HBO-LA starting December 1. While customers may preview the HBO channels free of charge in December, as of January 2008, customers will have to pay between TT\$43.99 to TT\$79.99 (roughly US\$7 to US\$13) for movie packages containing HBO-LA programming. The agreement is not retroactive; according to Bereaux and Oliva, this means Flow will not be liable for past signal piracy. Other premium movie channels, for which Flow does not have licensing agreements, such as Showtime and Starz, will be dropped from Flow's roster in December. Flow will continue to show eight unlicensed cable channels pending licensing agreements they are currently pursuing.

¶5. (U) According to Oliva, the agreement with Flow is similar to contracts concluded in other Latin American and Caribbean countries, including Curacao and Aruba. However, Oliva said Flow was very "aggressive" in their negotiations, asking not only for more marketing support from HBO-LA than is normally offered to Latin American providers, but also a launch event. HBO-LA agreed to these demands, recognizing that paying for premium movie channels is a new concept in Trinidad which may require more marketing.

Reactions from HBO-LA

¶6. (SBU) Oliva attributed success in Trinidad to HBO-LA's multi-pronged approach that included enlisting Embassy advice and

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support, raising the issue in the local media, and meeting in Washington with the Special 301 committee, Congressional staff and Executive branch officials dealing with IP issues. He dismissed any GOTT contribution, relating again his experience with one GOTT minister who said he liked watching free movies, and added the TATT "did nothing."

¶7. (SBU) COMMENT: Oliva's comments reflect his frustration with the long process needed to reach an agreement with Trinidad's main cable provider, and admittedly the GOTT and TATT were not the most active advocates for ending cable piracy. However, the GOTT's decision against compulsory licensing in 2007 likely was a factor pushing Flow towards negotiations, as were TATT's desultory efforts to bring Flow in compliance with the terms of Flow's concession, which forbids intellectual property violations. It is also a sign of the GOTT's tacit support for ending cable piracy that such an agreement, under which voters lose access to free premium movies, could be finalized one week before national elections. As HBO-LA starts negotiations with Columbus Communications in Jamaica and Bahamas, where compulsory licensing is not yet off the table, the impact of each government's attitude on the outcome of cable licensing negotiations should become clear.

¶8. (SBU) COMMENT CONTINUED: Governments and cable providers in the English-speaking Caribbean have long used the lack of English language programming for the Caribbean to justify their TV signal theft. HBO-LA created English-language programming for the Caribbean and agreed to sit at the negotiating table with the Caribbean cable providers, which has garnered them a new customer base and a precedent-setting agreement for the English-speaking Caribbean. This lesson is one from which other U.S. content providers may be able to learn and benefit. END COMMENT.

AUSTIN